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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation to Consider Policies to Achieve the Commission's Conservation Objectives for Class A Water Utilities.	Investigation 07-01-022 (Filed January 11, 2007)
In the Matter of the Application of Golden State Water Company (U 133 E) for Authority to Implement Changes in Ratesetting Mechanisms and Reallocation of Rates.	Application 06-09-006 (Filed September 6, 2006)
Application of California Water Service Company (U 60 W), a California Corporation, requesting an order from the California Public Utilities Commission Authorizing Applicant to Establish a Water Revenue Balancing Account, a Conservation Memorandum Account, and Implement Increasing Block Rates.	Application 06-10-026 (Filed October 23, 2006)
Application of Park Water Company (U 314 W) for Authority to Implement a Water Revenue Adjustment Mechanism, Increasing Block Rate Design and a Conservation Memorandum Account.	Application 06-11-009 (Filed November 20, 2006)
Application of Suburban Water Systems (U 339 W) for Authorization to Implement a Low Income Assistance Program, an Increasing Block Rate Design, and a Water Revenue Adjustment Mechanism.	Application 06-11-010 (Filed November 22, 2006)

**RESPONSE OF THE DIVISION OF RATEPAYER ADVOCATES
ON PRELIMINARY SCOPING MEMO**

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January 29, 2007

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ON PRELIMINARY SCOPING MEMO**

Pursuant to Rule 5.2 of the Commission's Rules of Practice and Procedure (Rules), the Division of Ratepayer Advocates (DRA) submits this Response on the Preliminary Scoping Memo in the above-captioned investigation.¹

I. INTRODUCTION

DRA applauds the Commission's commitment to considering its water conservation policies in an industry-wide investigation. DRA supports an exploration of how to best apply the Commission's conservation objectives in a manner that is comprehensive and consistent for the entire state on a policy basis, but that also builds in flexibility to allow adopted conservation measures to reflect the factual circumstances of each water service district. To these ends, DRA recommends that the Commission:

- Adopt a phased schedule to allow parties to first discuss settlements for pilot conservation rates, and then undertake a full investigation of the policy issues relating to conservation rates in a later phase. The phases would include the following:
 - Phase I (ratesetting) – Negotiations on the proposed conservation rates of California Water Company, Park Water Company, and Suburban Water Systems; informal discussions with all parties.
 - Phase II (quasi-legislative) – Investigation of the policy issues relating to conservation rates through informal meetings, comments, and possible evidentiary hearings.
 - Phase III (ratesetting) and/or subsequent proceedings – Development of district-specific conservation rates based on the policies adopted in Phase II.
- Include in the scoping memo the policy issues recommended by DRA in Attachment A to this Response.
- Exclude from this investigation all non-conservation issues raised in the application of Golden State Water Company, and require GSWC to file any non-conservation requests in a separate (non-GRC) proceeding. Furthermore,

¹ The Preliminary Scoping Memo is contained in the Order Instituting Investigation to Achieve the Commission's Conservation Objectives for Class A Water Utilities mailed January 16, 2007.

if the company still seeks conservation rates, GSWC should be required to file district-specific proposals (without a statewide average proposal).

A. “Conservation Rates” vs. “Increasing Block Rates”

As an initial matter, DRA recommends that the scoping memo in this proceeding refer more generally to “conservation rates” rather than referring only to “increasing block rates.” While the companies whose applications have been consolidated in this proceeding seek “increasing block” rate designs,² and the Commission’s Water Action Plan (WAP) singles out “increasing block rates,”³ the WAP also observes that “[v]arious rate designs can help promote efficient use of water.”⁴ In addition, Best Management Practices 11 (BMP 11) of the California Urban Water Conservation Council (CUWCC) lists a number of approaches to designing “conservation rates” other than “increasing block” rate designs.⁵ Referring to BMP 11, the OII itself lists uniform rates, seasonal rates, tiered rates, and allocation-based rates as potentially consistent with conservation rate design.⁶ Thus, referring to “conservation rates,” as opposed to only “increasing block rates,” would more accurately capture the rate-related issues that should be addressed in this proceeding.

B. Proposed Organization of Issues (see Attachment A)

DRA supports the examination of the specific issues identified in the preliminary scoping memo, and recommends additional issues discussed below.⁷ To facilitate the discussion of conservation rates and programs, DRA further recommends a reordering of

² See OII at 2 (summarizing the applications of Golden State Water Company (GSWC) (A.06-09-006), California Water Company (CalWater) (A.06-10-026), Park Water Company (Park) (A.06-11-009), and Suburban Water Systems (Suburban) (A.06-11-010)).

³ Water Action Plan, California Public Utilities Commission (December 15, 2005) (WAP) at 8-9.

⁴ WAP at 8.

⁵ See http://www.cuwcc.org/uploads/hotnews/BMP11_Revision_07-01-03.pdf (accessed on 1/29/07).

⁶ OII at 4.

⁷ As discussed in Section II, *infra*, DRA recommends that some of the issues raised in GSWC’s application be addressed in a separate proceeding.

the issues in the preliminary scoping memo along the lines of the outline included in this Response as Attachment A. In proposing this reordering, DRA has sought to sequentially present the questions and policy considerations related to implementation of the conservation objectives of the WAP in Attachment A.

C. Additional Issues Should Be Addressed In This Proceeding

Beyond the issues discussed in the OII, DRA recommends additional issues in this proceeding that are identified in Attachment A with asterisks (**). These include issues relating to low-income water efficiency,⁸ performance and reporting requirements for meeting conservation goals,⁹ Integrated Water Resource Management,¹⁰ greenhouse gas emissions,¹¹ and financial incentives for conservation.¹² DRA acknowledges that resolution of most of these issues may be resource-intensive. Thus, most subjects are likely to require separate proceedings (or could be done in a fourth or later phase of this investigation) but they are likely to be important aspects of water conservation that should be recognized as part of the Commission's consideration of water conservation policies generally. Accordingly, DRA includes these issues in Attachment A, but in many cases urges the Commission to solicit comment on the future processes that are most appropriate for addressing them.

II. RESOLUTION OF ISSUES IN GSWC'S APPLICATION

On September 6, 2006, Golden State Water Company (GSWC) filed Application (A.) 06-09-006 for authority to implement changes in ratesetting and allocation of rates.

⁸ Attachment A at Section B.

⁹ Attachment A at Section F.

¹⁰ Attachment A at Section I.

¹¹ Attachment A at Section I.

¹² Attachment A at Section I.

DRA filed a protest to this application on October 10, 2006.¹³ GSWC's application includes proposals for an increasing block rate design,¹⁴ a water revenue adjustment mechanism (WRAM),¹⁵ a water shortage allocation policy to be established in advance of a drought situation,¹⁶ and full cost balancing accounts.¹⁷ As a general policy matter, DRA supports addressing these types of conservation-related issues in this investigation.

DRA also notes, however, that GSWC has requested statewide rates which DRA opposes,¹⁸ and which the OII specifically excludes from this proceeding.¹⁹ DRA supports excluding the statewide rate issue from this investigation. However, the increasing block rates currently proposed by GSWC are nevertheless based on the assumption that it would also obtain statewide rates. As DRA stated in its Protest to GSWC's Application, "Tiers designed to encourage conservation are based on local consumption patterns, not statewide water use....Since GSWC's districts are scattered around the state, each district will have different consumption patterns and base line use."²⁰ If GSWC still seeks conservation rates, the Commission should require GSWC to file new proposals for conservation rates that are district-specific.

GSWC also requested additional changes to its ratesetting mechanisms in A.06-09-006 that are not related to conservation rate design. These changes include: (1) Water

¹³ Application of Golden State Water Company for Authority to Implement Changes in Ratesetting Mechanisms and Reallocation of Rates (September 6, 2006) (GSWC Application).

¹⁴ See, e.g., GSWC Application at 33-34.

¹⁵ See, e.g., GSWC Application at 27-30.

¹⁶ See, e.g., GSWC Application at 19-22.

¹⁷ See, e.g., GSWC Application at 31-32.

¹⁸ See Protest Of The Division Of Ratepayer Advocates To The Application Of Golden State Water Company For Authority To Implement Changes In Ratesetting And Allocation Of Rates (October 10, 2006) (A.06-09-006) at 12-13 (DRA Protest to GSWC Application).

¹⁹ OII at 9.

²⁰ DRA Protest to GSWC Application at 12.

Quality Memorandum and Water Quality Compliance Offset Accounts; (2) Long Term Planning for Water Infrastructure Projects; (3) Infrastructure System Replacement Surcharge; (4) State Bond Funding of Water Infrastructure Projects; (5) Cost Recovery of Expenses and Earnings Test; (6) Single, State-Wide Rate for GSWC Operations; (7) Regulatory and Investment Environment Policy Changes; and (8) Consolidation of Non-Viable Water Utilities. Because the purpose of this investigation is to address policies to achieve the Commission’s conservation objectives for Class A water utilities, the GSWC changes requested in A.06-09-006 that are not related to conservation rate design should not be considered in this investigation. DRA recommends that the Commission consider these issues in a separate proceeding. Therefore, GSWC should file a separate (non-GRC) application requesting the issues not related to conservation rate design.

III. SCHEDULE, CATEGORIZATION, AND EVIDENTIARY HEARINGS

DRA proposes that the schedule for this proceeding be conducted in phases, with each phase separately categorized as appropriate.²¹ In the first phase, conservation rates for some companies would be developed as test pilot projects that could be implemented relatively soon. A second phase of the proceeding should address industry-wide policy issues relating to conservation. Conservation rates based on the Commission’s adopted policies should then be developed for individual companies in a third phase of the proceeding (or possibly in separate proceedings).²²

²¹ The Commission’s Rules allow it to “divide the subject matter of [a] proceeding into different phases” and categorize the phases differently. Rule 7.1(e). *See also* R.06-04-010, Order Instituting Rulemaking to examine the Commission’s post-2005 energy efficiency policies, programs, evaluation, measurement and verification, and related issues. DRA also notes that this OII and the Order Instituting Rulemaking to Consider Revisions to the General Rate Case Plan for Class A Water Companies ([RCP OIR or Rate Case Plan OIR](#)) (R.06-12-016) both involve industry wide changes, and generally require the same staff for both DRA and the utilities. It is therefore important that the schedule for this OII be coordinated with that of the RCP OIR.

²² DRA has identified several issues that should be explored subsequently, in this proceeding or in another, and proposes that the OII solicit proposals on subsequent procedures. *See, e.g.*, Attachment A at Sections B, F, and I.

A. Phase I - Settlements

DRA recommends a phased schedule because there seems to be interest among utilities and the Commission to begin implementing conservation rate designs as soon as possible. DRA is in the process of concluding a settlement for conservation rates as a pilot project in the Los Angeles District of California-American Water Company (CalAm), and believes there is a good chance of settling with some of the other utilities that have filed conservation rate proposals.²³ Phase I of this proceeding should be categorized as ratesetting, and should allow parties time to develop similar settlements for conservation rates that may be adopted as pilot projects.

There are several policy issues relating to conservation rates that are complicated, detailed, and often interrelated. DRA cautions against rushing the examination of these industry-wide policy issues in order to resolve outstanding applications quickly and implement additional conservation rates soon. To allow full investigation of conservation policy issues, and yet implement additional conservation rates soon, the Commission should allow parties to negotiate possible settlements on conservation rates sought in the consolidated applications.²⁴ In addition, having parties engage in both informal discussions and settlement negotiations at the outset of the proceeding, on issues new to the Commission, should enhance and facilitate the later examination of general policy issues that DRA recommends for Phase II.

DRA proposes that Phase I commence with an informal all-party meeting to discuss DRA's data requirements and expectations for the proposed settlements. For the pilot projects, only the proposed conservation rate designs of CalWater, Park, and

²³ The general rate case for CalAm's L.A. District (A.06-01-005) was bifurcated, with the first phase addressing revenue requirement and the second phase addressing rate design. On December 22, 2006, in the Phase II of the proceeding, DRA and CalAm served a proposed settlement for conservation rates on all parties. After the Commission issues a decision on Phase I and adopts a revenue requirement, DRA and CalAm will calculate conservation rates based on the adopted revenue requirement and file a proposed settlement for public comment.

²⁴ While some proposals include requests for a WRAM and other conservation-rate-related issues, DRA is here referring to all conservation-rate-related issues as "conservation rates" generally.

Suburban, the consolidated applications that include district-specific rate proposals, should be considered.²⁵ These companies and DRA have agreed to enter into settlement negotiations on conservation rate design, and would focus on the issues raised in the relevant applications (which are mainly rate design). The applications consolidated in this proceeding contain requests for decoupling, revenue adjustment mechanisms, balancing accounts, and conservation programs that vary such that each application should be considered separately. As with all settlements approved by the Commission, settlements reached in this phase would not be considered precedential for any Commission determinations in this or any other proceeding.

To ensure that the informal settlement discussions with each company within the proposed schedule, DRA recommends staggered deadlines by which negotiating parties must finalize proposed settlements or report that settlement is not possible. CalWater, Park, and Suburban have provided DRA with their preferred order for negotiations, which would be independent of one another, and it is DRA's understanding that the companies generally support the schedule proposed by DRA for Phase I.

B. Phase II – Policy Issues

Phase II of DRA's proposed schedule should be categorized as quasi-legislative and would address the industry-wide policy issues for both price and non-price conservation activities. The Commission's Rules describe "quasi-legislative" proceedings as ones that "establish policy or rules (including generic ratemaking policy or rules) affecting a class of regulated entities, including those proceedings in which the Commission investigates rates or practices for an entire regulated industry...."²⁶ The policy issues raised in the OII address how to "achieve the Commission's conservation objectives for Class A water utilities," and a phase of the proceeding focused only on

²⁵ As discussed in Section II, *supra*, the application of GSWC does not include conservation rate proposals that are specific to individual districts.

²⁶ Rule 1.3(d).

those policy issues can appropriately be categorized as “quasi-legislative” within the meaning of the Commission’s rules.

In the policy phase of this proceeding, DRA expects that there are likely to be material issues of fact in dispute that will require evidentiary hearings. The Preliminary Scoping Memo states as follows, however:

We will consider policies applicable to all Class A water utilities initially, but may hold hearings to implement these policies for individual utilities. We do not expect that the overarching policy phase will require hearings.²⁷

DRA supports a cooperative process, and has integrated into its proposed schedule approximately one month for parties to engage in informal all-party meetings before filing opening comments on policy issues. Nevertheless, DRA anticipates that some issues, such as whether and the extent to which utilities’ required return on equity should be adjusted if a WRAM is adopted, will be hotly contested and raise questions of fact that necessitate evidentiary hearings. The Commission’s Rules specifically provide for the possibility of hearings in quasi-legislative proceedings.²⁸

DRA proposes that parties be given time to meet informally and file opening comments on policy issues before being asked to identify the issues and scope of evidentiary hearings. DRA therefore proposes that parties address the need for and the subjects of evidentiary hearings in reply comments on policy issues.

C. Phase III – Company-Specific Rates

Phase III of DRA’s proposed schedule should be categorized as ratesetting and would apply the policies adopted in Phase II to develop conservation rates for specific companies. DRA agrees with the preliminary scoping memo that evidentiary hearings

²⁷ OII at 10.

²⁸ Rule 13.3(c) states that: “In quasi-legislative proceedings, the assigned Commissioner shall be present for hearing on legislative facts (general facts that help the Commission decide questions of law and policy and discretion), but need not be present for hearing on adjudicative facts (facts that answer questions such as who did what, where, when, how, why, with what motive or intent).”

may be appropriate.²⁹ The Commission should require a company seeking conservation rates to submit a proposal (one that is consistent with the Commission's Phase II determinations) that would be considered, with evidentiary hearings as necessary, in this phase of the proceeding or in company-specific proceedings. DRA strongly discourages using the advice letter process to implement district-specific conservation rates. As DRA will discuss at greater length later in this proceeding, developing conservation rates that are appropriate to the consumption patterns of a specific district is as much an art as a science, and will remain so even after the Commission resolves the policy issues related to conservation rates.

In addition, to the extent that DRA was unable to resolve a currently-consolidated application for conservation rates through the settlement process, such an application could be litigated in Phase III. For example, DRA has not included informal settlement discussions with GSWC because, as discussed above, the company's proposed increasing block rates are based on the assumption that it would also obtain statewide rates.³⁰ If GSWC still seeks conservation rates, the Commission should require GSWC to submit district-specific conservation proposals.³¹

Finally, as discussed above, DRA has proposed that the Commission solicit comment in Phase II on future processes for addressing some policy issues relating to water conservation that are likely to be resource-intensive.³² It may be appropriate to address these and other policy issues in additional subsequent phases of this proceeding.

²⁹ OII at 10.

³⁰ *See, supra*, Section II.

³¹ When such proposals should be resolved depend on when they are filed.

³² *See, supra*, Section 1.C.

D. DRA's Proposed Schedule

Preliminary Phase

Proposed in OII	Proposed by DRA	
January 11, 2007	January 11, 2007	Order Instituting Investigation
January 22, 2007	January 22, 2007	Deadline for interested persons to get on service list
January 29, 2007	January 29, 2007	Deadline for filing responses on preliminary scoping memo
February 7, 2007	February 7, 2007	Prehearing conference at 10:00 a.m.
February 15, 2007	February 15, 2007	Assigned Commissioner's Ruling and Scoping Memo

PHASE I – Settlements

Proposed in OII	Proposed by DRA	
----	February 9, 2007	Informational Meeting for all interested parties
----	March 12, 2007	DRA and CalWater email service list regarding status of their discussions
----	March 28, 2007	DRA and Park email service list regarding status of their discussions
----	April 12, 2007	DRA and Suburban email service list regarding status of their discussions
----	March-April 2007	All-party settlement conference(s) noticed and held
----	March-April 2007	Proposed settlements filed
----	March-May 2007	Comments on proposed settlements
----	April-June 2007	Mailing of proposed First Interim Decision on settlements
----	TBD	First Interim Decision on settlements adopted

PHASE II – Policy Issues

Proposed in OII	Proposed by DRA	
----	April-May 2007	Informal all-party meetings on policy issues
March 2, 2007	May 1, 2007	Deadline for filing opening comments on policy issues
March 19, 2007	June 1, 2007	Deadline for filing reply comments on policy issues and identification of issues for evidentiary hearings
----	TBD	Second prehearing conference on next steps
----	TBD	Mailing of proposed Second Interim Decision
----	TBD	Second Interim Decision on policy issues adopted

PHASE III – Company-Specific Rates

Proposed in OII	Proposed by DRA	
----	TBD	Companies seeking conservation rates begin filing proposed conservation rates consistent with Second Interim Decision
----	TBD	Parties file responses to conservation rate proposals and recommendations on scheduling and next steps

DRA also notes that this OII and R.06-12-016, the Rate Case Plan OIR, both involve industry wide changes, and generally require the same staff for both DRA and the utilities. It is therefore important that the schedule for this OII be coordinated with that of the Rate Case Plan OIR.

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IV. CONCLUSION

For the reasons discussed above, DRA urges the Commission to modify the preliminary scoping memo in the manner discussed above.

Respectfully submitted,

/s/ NATALIE D. WALES

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January 29, 2007

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of “**RESPONSE OF THE DIVISION OF RATEPAYER ADVOCATES ON PRELIMINARY SCOPING MEMO**” in **I.07-01-022** et al by using the following service:

[X] **E-Mail Service:** sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

[] **U.S. Mail Service:** mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on January 29, 2007 at San Francisco, California.

/s/ NANCY SALYER
Nancy Salyer

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address and/or e-mail address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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